

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROYAL JOHNSON**, on March 6, 2003 at
3:00 P.M., in Room 317-B & C Capitol.

ROLL CALL

Members Present:

Sen. Royal Johnson, Chairman (R)
Sen. Corey Stapleton, Vice Chairman (R)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Gary L. Perry (R)
Sen. Don Ryan (D)
Sen. Emily Stonington (D)
Sen. Bob Story Jr. (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Services Division
Marion Mood, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 392, 2/24/2003;
HJ 16, 2/24/2003;
HB 424, 2/24/2003
Executive Action: HJ 16; HB 392

HEARING ON HB 392

Sponsor: REP. SANDY WEISS, HD 13, BILLINGS

Proponents: Greg Jergeson, PSC

Opponents: None

Opening Statement by Sponsor:

REP. SANDY WEISS, HD 13, BILLINGS, presented HB 392, stating this bill eliminated the Interim Universal Access Program for Advanced Telecommunications Services. She explained this program had been funded, for two years only, by a surcharge on telecommunications carriers' revenue for all calls originating or terminating in Montana; no monies had been contributed since 1999 according to statute, and the remaining funds were allocated to the general fund and DPHHS in the 2002 Special Session.

Proponents' Testimony:

Greg Jergeson, PSC, submitted written testimony,
EXHIBIT (ens47a01).

Questions from Committee Members and Responses:

There were no questions from the committee.

Closing by Sponsor:

REP. SANDY WEISS, HD 13, BILLINGS closed on HB 392.

HEARING ON HJ 16

Sponsor: SCOTT MENDENHALL, HD 39, CARDWELL

Proponents: Greg Jergeson, PSC
 Tom Figarelle, Forward Montana
 Tom Daubert, Navitas Energy
 Patrick Judge, MEIC
 Cody Ferguson, Northern Plains Resource Council
 Debbie Smith, NRDC/RNP
 Lynn Fairbanks, Sierra Club

Opponents: None

Note: The committee stood at ease for 5 minutes until the remaining two sponsors arrived.

Opening Statement by Sponsor:

SCOTT MENDENHALL, HD 39, CARDWELL, presented HJ 16, explaining this resolution called on Congress to extend the tax credits for

wind power generation expeditiously. He added Montana ranked 5th in the nation for wind power capacity but planned wind generation projects, such as NorthWestern Energy's, were in jeopardy because current tax credits are slated to expire at the end of 2003.

Proponents' Testimony:

Greg Jergeson, PSC, expressed the commission's support for HJ 16 and handed out **EXHIBIT(ens47a02)**, a copy of **Commissioner Rowe's** letter to Senator Conrad Burns, dated January 24, 2003. As an aside, he related positive comments he had received from his constituents during his campaign travels with regard to including wind generation.

Tom Figarelle, Forward Montana, also stood in support of HJ 16, saying Montana had too many under-used natural resources such as timber, coal, and wind power. He stated farmers in Texas use this credit to supplement their income when they have a bad year for crops, and felt the same could be done in this state. He lauded NorthWestern Energy for adding wind power to their portfolio.

Tom Daubert, Navitas Energy, stated this company was one of the nation's more experienced and successful wind power companies which had shown persistent interest in coming to Montana and erecting a wind farm at the abandoned Golden Sunlight Mine site. He contended states with less wind power potential were deriving a significant part of their electricity from this technology. He said this bill was important because whoever was responding to NorthWestern Energy's current RFP and ultimately ended up with the contract, would have difficulty in raising the necessary funds because the current federal tax incentives were set to expire long before a plant could be up and running.

Patrick Judge, MEIC, repeated his organization's mantra on the many virtues of wind energy and other alternative energy sources and urged the committee's support for this resolution. He added he was a member of NorthWestern Energy's Internal Technical Advisory Committee on default supply issues, and their initial foray into a wind energy project was very encouraging and could ultimately save rate payers money.

Cody Ferguson, Northern Plains Resource Council, also rose in support of HJ 16, saying it was a step in the right direction because it promoted a clean and renewable source of power.

Debbie Smith, NRDC/RNP, stated both organizations were working in Congress to ensure the extension of the federal production tax credit, and it would be beneficial for the state of Montana to

show its support to its congressional delegation and to Congress at large because this extension was important for the financing of new wind projects and to the state's economic development.

Lynn Fairbanks, Sierra Club, stood in support of HJ 16, saying time was of the essence in passing this resolution in order to extend the existing federal tax benefits beyond the year 2003.

Questions from Committee Members and Responses:

SEN. EMILY STONINGTON, SD 15, BOZEMAN, asked for an update on the RFP program, mainly the time frame of the bids. **Mr. Jergeson** referred her question to **Mr. Judge** who explained NorthWestern Energy had received eight bids and were in the process of narrowing the field. **SEN. STONINGTON** wondered how the process would work, if they would narrow it down to two or three, and then select one or two and forward the proposals to the PSC. **Mr. Judge** confirmed this was the process. **SEN. BOB STORY, SD 12, PARK CITY**, asked what the amount of the credit was. **Mr. Judge** stated the credit amounted to about \$17 per megawatt hour.

Closing by Sponsor:

REP. MENDENHALL closed on HJ 16, repeating it was important to have this credit extended quickly; typically, it took about a year for a wind farm to be developed, and with the uncertainty of the fate of the tax credit, companies would build in increased cost capital to incorporate any risk. To illustrate the importance of staying competitive, he informed the committee that a Montana Power Company RFP came in with \$28 per megawatt which included an \$18 wind power tax credit; without the credit, the price would have been \$46 per megawatt.

HEARING ON HB 424

Sponsor: **REP. LARRY JENT, HD 29, BOZEMAN**

Proponents: **Jim Kembel, MT Assn. of Chiefs of Police/MT Police Protective Association**
Pat Callbeck-Harper, AARP
Cort Jensen, Dept. of Administration, Consumer Protection Office
John Shontz, Montana Newspaper Association
Pam Bucy, Department of Justice
Brad Griffin, MT Retail Association
Ross Cannon, Direct Marketing Association
Tom Ebzery, Qwest

Steve Turkiewicz, Montana Automobile Dealers Assn.

Opponents: None

Opening Statement by Sponsor:

REP. LARRY JENT, HD 29, BOZEMAN, presented HB 424, stating it required the Attorney General's Office to establish and enforce a do-not-call list with regard to telemarketing; he added it passed the House on Third Reading with a vote of 98-2 and was similar to SB 62. He brought this bill because he felt it was a citizen's fundamental right to be left alone in his own home. Similar to a bill heard previously, the consumer would initially sign up for this list through a website and later on, a toll-free 800-number would be established; all telemarketers are required to purchase this list. He listed some of the exemptions, such as non-profit organizations, and submitted **EXHIBIT(ens47a03)**, a list of proposed amendments.

Proponents' Testimony:

Jim Kembel, MT Assn. of Chiefs of Police/MT Police Protective Association, rose in support of HB 424 as amended by the sponsor.

Pat Callbeck-Harper, AARP, stated her organization's support of HB 424 because seniors make up the most vulnerable segment of the state's population, and this would afford them protection from falling victim to telemarketers.

Cort Jensen, Dept. of Administration, Consumer Protection Office, stated the federal telemarketing bill had passed, and people would be able to start signing up in June of this year, and its enforcement would begin in October. He added HB 424 was very similar to SB 62, except for some exemptions.

John Shontz, Montana Newspaper Association, alluded to being one of the exemption requesters and stated his organization had not engaged in this issue until now because of the uncertainty of the federal rules' application to the industry. He stated it became apparent that federal rules include every newspaper in Montana, without exception, because every one of them sells at least one subscription out of state and carries national advertisements. He submitted **EXHIBIT(ens47a04)**, a Montana newspaper directory, and **EXHIBIT(ens47a05)**, written testimony with proposed amendments and copies of the federal telemarketing rules.

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Pam Bucy, Department of Justice, also rose in support of HB 424, adding the federal laws do not apply to intra-state calls which made it important to establish a Montana do-not-call list.

Brad Griffin, MT Retail Association, suggested a friendly amendment, namely extending the 180 day prior business relationship to 18 months which would coincide with federal regulations and **SEN. TAYLOR's** SB 327.

Ross Cannon, Direct Marketing Association, echoed **Mr. Shontz'** comments because now there was a comprehensive set of federal regulations and requirements dealing with telemarketing. He urged the committee to select one or two of the telemarketing bills which had been introduced this session and craft a workable and rational bill, collaborating with the involved parties.

Tom Ebzery, Qwest, submitted written testimony,
EXHIBIT(ens47a06).

Steve Turkiewicz, Montana Automobile Dealers Association, rose in support of HB 424 with the amendment proposed by **Mr. Griffin**.

Questions from Committee Members and Responses:

SEN. BEA McCARTHY, SD 29, ANACONDA, asked if he had presented his amendment during the hearing in the House, and **Mr. Shontz** replied he had not; he stated he had referred to the exceptions for newspapers and periodicals in current law which did apply to them because almost all of them engaged in some kind of interstate commerce. **SEN. McCARTHY** wondered if his amendments fit in with the federal regulations which he confirmed. **SEN. McCARTHY** referred to an amendment with the sponsor's name on it and asked if he had neglected to discuss it. **REP. JENT** replied EXHIBIT (3) was his amendment which had been prepared by the Attorney General's Office to define "non-profit"; at first, they had defined it as 501 (c)(1) as per IRS code and in order to simplify it and cover all non-profits, they had stricken the tax code reference. **SEN. McCARTHY** inquired if he had seen **Mr. Shontz'** amendments, and **REP. JENT** advised he had seen them and explained the federal law covered interstate telemarketing and not intra-state calls. The amendments proposed by **Mr. Shontz** basically destroyed the bill; the intent of HB 424 was to protect Montana's consumers, and item (2) of the amendments made this impossible. **SEN. STONINGTON** referred to the sponsor's comments about the broad definition of non-profits and stated according to **Mr. Jensen**, this would go against the intent of telemarketing bills because almost all of the telemarketing firms enjoyed non-profit status and thus, could not be touched. **REP. JENT** replied this had not been brought up in previous hearings and discussions, and

he had not been aware of it but hoped the committee would be able to address and solve the problem; he had initially defined those groups by their tax code because it was his understanding that groups who organized to raise funds were also organized under these IRS codes. **SEN. STONINGTON** contended she understood companies did not have to be organized under the IRS codes to be non-profit organizations; charitable organizations under these definition which were organized under the IRS codes, on the other hand, would fall under the bill's original designation. She then asked **Mr. Jensen** to clarify the distinction between being organized under the IRS codes and the term "non-profit entity".

Mr. Jensen explained there actually were three definitions, namely non-profit, charitable, and the IRS tax code designation. Non-profit covered a wide range of industries, including charitable non-profits which enjoy tax-exempt status; some non-profits are not "charitable"; some who deemed themselves "charities" are for profit; he added the tax definition had little to do with the purpose of the organization, and if all the designations for "non-profit" under the tax code were used, it would encompass far more industries than just "charitable non-profits". Moreover, the non-profit designation could exclude some churches which fall under a different tax code altogether.

SEN. STONINGTON asked whether he would recommend the term "charitable non-profit entity" be used rather than the IRS code designation or just "non-profit entity". **Mr. Jensen** replied he would since it came closer to the bill's intent as well as being more like the federal definition of charitable solicitation.

SEN. STONINGTON referred to item (2) of his amendment and asked what he meant by "any Montana based business or entity would be exempt". **Mr. Shontz** advised it was an oversight, he had intended for it to say "newspaper" entity. **SEN. STONINGTON** wondered why newspapers should be exempt when other businesses were not. **Mr. Shontz** stated newspapers could not engage in deceptive practices and then hide behind the cloak of anonymity like some off-shore telemarketers; he added exempting newspapers was a big issue because they did engage in telemarketing with regards to subscriptions to a community's newcomers, for instance, and he wanted them to be able to continue to make these calls. **SEN.**

STONINGTON pointed to item (4) of his amendment which also did not specify "newspaper" businesses and inquired whether this, too, was an oversight. **Mr. Shontz** explained the intent of the amendment was to ensure that if newspapers were exempt from the state law, they would be governed by federal law. **SEN. KEN TOOLE, SD 27, HELENA,** asked for clarification as to what kinds of organizations were charitable for profit, and how they were organized under the tax code. **Mr. Jensen** advised they were not organized that way in the tax code; as an example, he mentioned police organizations which do not qualify as non-profit but can state their purpose to be "charitable" when filing with the

Montana Secretary of State. **SEN. TOOLE** commented it was his understanding there was a specific section under IRS code C-5 which applied to religious organizations. **Mr. Jensen** replied he had been under the same impression until a federal tax attorney advised him there were other types as well, such as youth groups, camps, and trust-funded churches which fall under different sections of the tax code. **SEN. TOOLE** wondered if part of the apparent confusion was the fact that some corporations never file for any kind of credible tax status, which **Mr. Jensen** confirmed. **SEN. BOB STORY, SD 12, PARK CITY,** recalled **Mr. Kembel** had supported this bill with an amendment and asked whether this was the "non-profit" amendment. **Mr. Kembel** replied they had in fact discussed inserting 501 (c) (1) through (c) (11) which would have worked for his organization; in working with **Ms. Bucy**, though, he felt the non-profit designation could present a problem.

CHAIRMAN ROYAL JOHNSON, SD 5, BILLINGS, referred to the sponsor's opening statement that the bill passed the House 98-2 without amendments and wondered if this indicated people liked the bill as originally written. **REP. JENT** replied it did, adding several possible amendments were discussed in the House committee but did not make it into the bill except for the Attorney General's amendment which was before this committee. **CHAIRMAN JOHNSON** asked if he was on the House Federal Relations, Energy & Telecommunications Committee (FRET), and whether SB 62 had been heard yet. **REP. JENT** replied he was not a member of the FRET Committee, and SB 62 had not made it to the House floor yet. When asked about the difference between the two bills, **REP. JENT** pointed out the enforcement of SB 62 was left to the Department of Administration rather than the Attorney General's Office. He alluded to a House Bill which took the Consumer Protection Office out of the Dept. of Administration and put it into the Department of Justice. **CHAIRMAN JOHNSON** asked **Mr. Shontz** if people had indicated to him, in the last two months since these bills had been introduced, that they would not mind getting calls from newspapers but not from other telemarketers, or whether they did not want to be called at all. **Mr. Shontz** felt the main issue, the one which started this whole telemarketing debate, was the fraud issue, and fraud was still being committed. **CHAIRMAN JOHNSON** asked whether he thought a do-not-call list or any other kind of list would stop these people from making calls. **Mr. Shontz** felt if he put his name on a do-not-call list, he would not be subjected to telemarketing calls. **CHAIRMAN JOHNSON** commented it still would not take his telephone number out of the phone book, and **Mr. Shontz** replied none of these consumer-initiated bills would keep fraudulent calls from happening; he compared these bills to other regulatory laws such as the speed limit law, saying these require voluntary compliance and would

not be heeded by everybody. The other issue, in his opinion, was the "hassle" factor; people did not want to be bothered by these calls at home and given the exemptions at both the federal and the state level, surmised this would not change much. **SEN. MIKE TAYLOR, SD 37, PROCTOR**, wondered, in looking over the bill and the amendments, who would not be able to call anymore. **REP. JENT** replied it would be those who were in the business of selling something over the phone and who were not part of charitable organizations. **SEN. TAYLOR** felt, given all the exemptions, just about everybody could still call. **REP. JENT** did not agree and listed a host of organizations which could not call, such as credit card and phone companies, newspapers, vacuum cleaner and auto glass salesmen, and so on. **SEN. TAYLOR** disagreed with regard to phone companies because Qwest could still call. **REP. JENT** replied Qwest could only call if they had a pre-existing business relationship. **SEN. TAYLOR** commented he did not want to put him on the spot but felt this bill would not accomplish ending dubious and fraudulent telemarketing calls. **REP. JENT** contended all of these things could be worked out within the parameter of the bill; he would be willing to sit down with this committee and define groups within the IRS tax codes (c) (1) through (c) (11), or use tighter definitions available through the Secretary of State's Office; since this was an area of concern, it should be resolved.

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Closing by Sponsor:

REP. JENT closed on HB 424, stating since the federal telemarketing bill did not cover credit card or phone companies, banks or airlines, it was important for Montanans to have their own bill.

EXECUTIVE ACTION ON HJ 16

Motion/Vote: **SEN. MCCARTHY** moved that HJ 16 BE CONCURRED IN. **Motion carried unanimously.** **SEN. MCCARTHY** will carry HJ 16 in the Senate.

EXECUTIVE ACTION ON HB 392

Motion/Vote: **SEN. STORY** moved that HB 392 BE CONCURRED IN. **Motion carried unanimously.** **SEN. STORY** will carry HB 392 in the Senate.

CHAIRMAN JOHNSON suggested forming a joint committee with members of the FRET Committee to discuss the various areas of concern in order to arrive at a workable bill; **SEN. STONINGTON** felt it would be better to have the sponsors of the telemarketing bills try to reach such an agreement.

ADJOURNMENT

Adjournment: 4:05 P.M.

SEN. ROYAL JOHNSON, Chairman

MARION MOOD, Secretary

RJ/MM

EXHIBIT (ens47aad)